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May 16, 2007

Mr.  
Law Offices

RAMON J. HIRSIG  
Executive Director

***Re: Change in Ownership***

Dear Mr. :

This is in response to your letter received on January 8, 2007, addressed to Acting Assistant Chief Counsel Robert Lambert. In your letter, you request a legal opinion as to whether a transfer from an irrevocable trust to the children of the trustors qualifies for the parent-child exclusion. For the reasons set forth below, we conclude that the transfer qualifies for the parent-child exclusion.

**Factual Background**

You have provided the following facts:

Husband (H) and Wife (W) owned a principal residence (property) as community property. On November 4, 1981, H and W transferred the property to a general partnership (partnership). The partnership interests were held by H and W as partners.<sup>1</sup> The partnership agreement did not provide for a continuation of the partnership on the death of a partner.

On August 11, 2002, H and W created a revocable living trust. H and W then transferred their respective partnership interests to the trust. For purposes of this letter, we assume that the trust corpus consisted of only the partnership interests at the time of the transfer. Later, W died. Following W's death, the revocable trust became irrevocable (irrevocable trust). H became the sole present beneficiary of the irrevocable trust during his lifetime, and the children of H and W (children) became the remainder beneficiaries. On March 14, 2004, H died. The trust corpus was then distributed to the children.

You believe the parent-child exclusion should apply to the distribution of the trust corpus to the children because the partnership dissolved on W's death and, as a result, the transfer to the children was a transfer of real property. However, it is our understanding that the assessor's office does not agree that the partnership dissolved on W's death and that parent-child exclusion

<sup>1</sup> For purposes of this letter, we assume that H and W each owned a 50 percent interest of both the capital and profits of the partnership.

should not apply to the transfer of the trust corpus to the children because the transfer was a transfer of partnership interests, not real property.

### **Question Presented**

Whether the transfer of the property from the irrevocable trust to the children was a transfer of partnership interests or a transfer of real property that is excluded under the parent-child exclusion.

### **Law & Analysis**

A "change in ownership" is defined as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. (Rev. & Tax. Code, § 60.) A change in ownership does not include transfers into trusts where the trustor or trustor's spouse is the present beneficiary of the trust, or where the trust is revocable. (Rev. & Tax. Code, § 62, subd. (d).) Because revocable living trusts are not treated as separate legal entities for property tax purposes (i.e., we "look through" the trust), the trustor of a living trust is regarded as the owner of the real property or legal entity interests held by the trust. (Property Tax Rule<sup>2</sup> 462.160.) However, a change in ownership occurs when the transfer of any interests in real property vest in any person other than the trustor when a revocable trust becomes irrevocable, unless an exclusion applies (e.g., parent-child exclusion or interspousal exclusion). (Rev. & Tax. Code, § 61, subd. (h).)

Revenue and Taxation Code<sup>3</sup> section 63.1, the parent-child exclusion, excludes from change in ownership purchases or transfers of: (1) the principal residence between parents and their children, and (2) the first \$1 million of the full cash value of all real property other than a principal residence between parents and children. (Rev. & Tax. Code, § 63.1, subd. (a).) Thus, the parent-child exclusion only applies to the transfer of real property between parents and their children, not legal entity interests.

Under Corporations Code section 16101, subdivision (9) a partnership is an association of two or more persons to carry on as co-owners of a business for profit. A partner, who is an individual, is dissociated from a partnership upon the death of that partner. (Corp. Code, § 16601, subd. (9).) After a partner's dissociation by death, the partnership is dissolved 90 days later and its business is wound up unless there is a partnership agreement that provides for the continuation of the partnership. (Corp. Code, § 16801, subd. (2)(A).)

In this case, when H and W transferred their partnership interests to their trust, there was no change in ownership because the trust was revocable. (See Rev. & Tax. Code, § 62, subd. (d).) When W died, the partnership dissolved 90 days after her death by operation of law because there was no agreement between H and W that provided for the continuation of the partnership. (See Corp. Code, § 16801, subd. (2)(A).) At that time, H held the real property in the trust indirectly as an individual, not as an interest in a legal entity. Thus, any transfers from the trust that occurred 90 days after W's death were transfers of real property, not partnership interests.

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<sup>2</sup> All Property Tax Rule or Rule references are to title 18 of the California Code of Regulations.

<sup>3</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

The transfer of W's community property interest in the trust to H, the sole present beneficiary, was not a change in ownership under the interspousal exclusion. (See Rev. & Tax. Code, §§ 62, subd. (d) and 63.) When H died, the children became the present beneficial owners of the property held by the irrevocable trust. Since the children were the remainder beneficiaries of the irrevocable trust, the transfers should be treated as coming from H and W (as trustors of the trust). The transfer of the property from the irrevocable trust to the children will qualify for the parent-child exclusion under section 63.1, if all the filing requirements have been met, since it was a transfer of a principal residence from H and W to their children.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board of Equalization based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

*/s/ Mariam Baxley*

Mariam Baxley  
Tax Counsel

MB:pb  
Prop/Prec/PARCHILD/07-006.mb.doc

cc: Honorable  
Attn:  
County Assessor

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